AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON LAW AND NATIONAL SECURITY

INTELLIGENCE REPORT

Vol. 2, No. 3 | Morris I. Leibman, Chairman | March 1980

Senate Actions Affecting Intelligence

The full Senate Select Committee began hearings on S.2284, The National Intelligence Act of 1980, on February 21st with testimony from CIA Director Turner, and on February 28th with testimony from other Administration witnesses representing the CIA, FBI, National Security Agency, Department of Defense and Defense Intelligence Agency. A summary of the testimony is included in this newsletter. Hearings will continue through March. (See Calendar.)

The Senate Intelligence Budget Authorization Subcommittee met in executive session on February 25th to consider FY81 authorizations for intelligence activities.

House Actions Affecting Intelligence

The House Intelligence Committee marked up H.R.4736, the graymail legislation, on February 12th and voted to report the bill out of committee. The Committee met with CIA officials in executive session during the week of February 25th on the intelligence budget overview. These closed hearings are scheduled to continue through March. Hearings planned for February 27th on H.R.5885, the senior cryptologic executive service act, were cancelled and are expected to be rescheduled in March.

Rep. Edward Boland (D.-Mass.) introduced H.R. 6588 on February 25th. This bill is identical to S.2284, The National Intelligence Act of 1980, introduced in the Senate on February 8th. (See February newsletter.) Hearings on H.R.6588 begin in March. (See Calendar.) Other bills recently introduced: *H.R.6314* introduced by Mr. Symms (R-Idaho) on January 28, *H.R.6316* introduced by Mr. Young (R-Fla.) on January 28, *H.R.6347* introduced by Mr. Luken (D-Ohio) on January 30, *H.R. 6384* introduced by Mr. Duncan (R-Tenn) on January 31, and *H. R.6385* introduced by Mr. Evans (R-Del.) on January 31, to amend section 662(a) of the Foreign Assistance Act of 1961 (the Hughes-Ryan amendment) to provide that the reports of the President to Congress on certain CIA activities be submitted only to the Committee on Intelligence of each House of Congress, referred jointly to the House Foreign Affairs and Intelligence Committees.

The House Foreign Affairs Subcommittee on International Security and Scientific Affairs continued hearings on February 20th on the role of intelligence in the foreign policy process. Testimony was heard from members of Congress, CIA Director Turner and John Maury; a summary is included in this newsletter.

Senate Hearings on Graymail Legislation

February 7, 1980

Senator Joseph R. Biden (D-Del.) chaired hearings on S.1482 before the Judiciary Committee's Subcommittee on Criminal Justice. He said "national security considerations require a graymail bill to facilitate espionage prosecutions while accountability for intelligence agencies require that graymail procedures be in place to protect against possible criminal acts by intelligence agents." He assured that whatever remaining areas of disagreement exist, there is nevertheless a basic consensus for proceeding.

Asst. Attorney General Heymann

Asst. Attorney General Philip Heymann of the Criminal Division outlined the Department's position on

Inside

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Graymail Legislation *continued from page 1*

the bill, including the definitions of "classified information" and "national security," pretrial conferences, disclosure of classified information to defendants, procedures for cases involving classified information, interlocutory appeal, the Jencks Act exception, and the Attorney General Guidelines. He reviewed the actions taken by the CIA and the American Bar Association, concluding that in essence the different positions were not far apart.

Administration Panel

A panel followed consisting of Brent Rushforth, Deputy General Counsel, Department of Defense; Dan Silver, General Counsel, CIA; and Daniel Schwartz, General Counsel, National Security Agency. Mr. Rushforth supported the DOJ position fully, especially Mr. Heymann's suggestion that the legislation specifically spell out "protective orders." He advised that the Defense Department prefers oral briefings and that this issue causes great concern. Questioned by Biden whether this concern is due to leaks, he reflected that both the legislative and executive branches of government have difficulty keeping national security secrets. He said the bill does not represent "major surgery."

Mr. Silver expressed three areas of concern to the CIA: espionage prosecutions, allegations about the CIA in criminal investigations, and questions dealing with the CIA's own employees. He emphasized the difference between this version of the bill and the Administration version, reiterating the government's need to prove the contents of cleared documents without actually producing the documents. He said with or without the inclusion of the Guidelines, this legislation would make the process function more smoothly.

Mr. Schwartz also voiced support for the legislation, focusing on those areas of concern to the NSA. He stressed the substantial harm caused by the release of sensitive materials in criminal prosecution cases, saying that S.1482 would make significant improvements in these situations. Questioned by Senator Biden about section 8 of the Administration version of the bill dealing with elimination of the "best evidence" rule, Mr. Silver stated the Administration's intent is to prove its case without allowing the court to see an actual document because of the difficulty in "sanitizing" sensitive information. The DOJ Guidelines whether or not to prosecute do not pose a problem, Mr. Silver said, since there is sufficient leeway built in.

Finally, when Senator Biden asked whether this legislation would impact the government's ability to prosecute offenders, Mr. Silver stated that it would solve the majority of the problems, up to 95%, and that no piece of legislation could solve the remaining 5%. Mr. Schwartz and Mr. Rushforth concurred. Senator Biden concluded his interrogation of this panel by asking each member whether he agreed with Anthony Lapham's testimony during the House hearings that the Jencks Act does not present a problem. Each responded that a problem does exist only in very rare cases, but when it does, it is indeed extremely serious.

ACLU Panel

Mr. Morton H. Halperin and Mr. Allan Adler advised the Committee that although they had some problems with the bill, most provisions were not controversial. They argued that the standard for admissibility of evidence must not be affected by the fact that the information involved is classified; the judicial determination of relevance must be the government's burden, not the trial judge's; and the principle of reciprocity must apply. They felt the most objectionable part of the bill is the provision that would modify the Jencks Act, which would be unconstitutional. Mr. Halperin agreed to provide the Committee with a legal memorandum on this point. Mr. Halperin said that the revision of the espionage laws is essential.

Mr. Scheininger

Michael G. Scheininger, former assistant U.S. Attorney, agreed that some legislation is necessary, but that both the Administration and Senate versions go too far by changing present law and thus performing "major surgery." He said it is unconstitutional to preclude a defendant's access to any material relevant to his case. He said the trigger mechanism in section 6 of the Administration version fails to allow an adversary process, that the House version resolves this by separating "classification" from "relevance", but that S.1482 offers the worst aspects of both versions.

Mr. Silbert and Prof. Greenhalgh

Mr. Earl Silbert of the American Bar Association's Standing Committee on Law and National Security and Professor William Greenhalgh of the Section of Criminal Justice appeared before the Committee. Mr. Silbert reviewed the actions taken on the floor of the ABA House of Delegates meeting on February 4 concerning the graymail legislation. He advised the Committee of the substitute resolution which had passed by voice vote, and reviewed its recommendations. (See February newsletter.) Thanking the two men for participating, Senator Biden took this opportunity to expound upon the constitutional dilemma posed by this piece of legislation. He expressed fear that the "small window" on any congressional oversight of national security agencies may be closed completely by this Congress. The final minutes were devoted to a discussion of the basic disagreement between Mr. Silbert and Professor Greenhalgh on the Jencks Act. Mr. Silbert emphasized his opinion that the Act can and should be altered, while Professor Greenhalgh argued emphatically that it must not be amended.

Congressional Calendar

Mar. 3	House Intelligence	FY81 Budget Authorizations (closed)
Mar. 4	House Judiciary	FBI Undercover Operations
Mar. 5	Senate Intelligence	CIA Charter (postponed)
	Senate Intelligence	Budget Authorizations (closed)
Mar. 11	Senate Intelligence	CIA Charter
	Senate Intelligence	Budget Authorizations (closed)
Mar. 12	Senate Intelligence	Budget Authorizations (closed)
Mar. 13	Senate Intelligence	CIA Charter
Mar. 14	Senate Intelligence	Budget Authorizations (closed)
Mar. 18	Senate Intelligence	CIA Charter
	House Intelligence	CIA Charter
Mar. 19	Senate Intelligence	Budget Authorizations (closed)
	House Intelligence	CIA Charter
Mar. 20	House Intelligence	CIA Charter
Mar. 21	Senate Intelligence	Budget Authorizations (closed)
To Be Announced	Senate Judiciary	FBI Charter
	House Intelligence	CIA Charter
	House Intelligence	Senior Cryptologic Executive Service
	House Judiciary	Graymail

Hearings on the National Intelligence Act of 1980

February 21, 1980

Before the full Senate Select Committee on Intelligence, Chairman Birch Bayh (D-Ind.) opened hearings on the Senate Charter bill, S.2284 by saying this represented the culmination of five years of work by the Congress and that it reflected a consensus arrived at by the Committee, the President and the intelligence community. Each of the senators in turn emphasized that the complex piece of legislation should be passed this year, but that the issues are controversial.

It quickly became obvious, however, that the areas of disagreement between the Committee and the Administration are more acute than was originally believed. Senator Biden stressed that the oversight issue is the focal point, while Senator Moynihan faulted the Administration for creating a stalemate which resulted in the abbreviated version of the bill. Senator Lugar cited the pendulum of opinion swinging towards a strengthening of the intelligence community, but reiterated the need for checks and balances. Senator Jackson reflected that he had deep reservations about writing dos and don'ts into legislation. Confirming that the "CIA is an indispensable tool to the preservation of liberty," he advised that a charter would lead to trouble in the future. Senator Wallop agreed with Jackson, but stated a need for some specifics to ensure that the Agency no longer operates in a vacuum. Senator Durenberger went even further by stating that Congress will only pass a charter with assurances of oversight.

Admiral Stansfield Turner, Director, Central Intelligence Agency, was the only witness and began his testimony by supporting the charter legislation, emphasizing that guidance is needed for intelligence officers. He then outlined the controversial issues which had prevented the introduction of a bill with full Administration support. It soon became apparent that the Committee was not aware of the scope of the Administration's differences.

Oversight under Present Law

Senator Bayh asked whether reporting to the two Committees had inhibited the Director from performing his job, and seemed surprised when the Director answered that the Administration had held back information in more than one instance. Turner advised that reporting sensitive information often had a "chilling effect" on the willingness of those involved in covert action to cooperate, and that prior notification could endanger the lives of agents. When advance notice might have jeopardized lives, the Committees had not been advised.

Administration Amendments to S.2284

- The organization of the bill obscures the purposes of the agencies and the oversight process; the bill should be reorganized.
- The charter should contain authority for the President to waive any provision in the act to the extent necessary to carry out activities during war or under the war powers resolution.
- Reporting of significant anticipated intelligence activities, including special activities or covert actions, is unwise. The Administration cannot support sections 142 and 125 as written and favors alternative oversight provisions for timely, not prior, reporting.
- Section 142 of the bill fails to mention specifically the duty of the DNI to protect intelligence sources and methods, the practical impact of which could be very harmful. The CIA seeks amendment of the Hughes-Ryan and FOIA Acts as well as passage of the names of agents bill. Inclusion of all-encompassing Congressional access to data would contradict and nullify these steps.
- Section 132 of the bill prohibits the maintenance of any cover involving individuals who are members of the media, religious or academic organizations. Since these groups are often the only means available for certain intelligence objectives, internal guidelines are favored for instances of urgency rather than a blanket prohibition.
- The protection of intelligence sources and methods as well as necessary secrecy is another major shortcoming of the bill. The bill only exempts certain CIA files from the FOIA, but should provide relief for NSA, FBI and other intelligence community components. Even more serious is the failure of S.2284 to provide protection against unauthorized disclosure of the identities of intelligence officers, agents and sources.
- The Administration favors further amendments to the Foreign Intelligence Surveillance Act (a) to permit targeting of dual nationals in senior foreign military or government positions who retain U.S. citizenship; (b) to permit targeting of former senior foreign government officials even if they are not acting in the U.S. as members of a foreign government or faction; and (c) to extend the emergency surveillance period from 24 to 48 hours.

Senator Jake Garn (R-Utah) stated that his inclination is to support limiting the reporting requirements to one joint committee. He recommended that security checks be run on all members of Congress serving on these committees. He agreed with the Administration view that prior notification might endanger lives, but stressed that in his opinion most leaks come from the executive branch. He questioned the wisdom of a blanket prohibition against assassinations, for example, as symptomatic of the problems of trying to write "dos and don'ts."

Senator Adlai Stevenson (D-Ill.) stated that legislation should address the need to maintain confidential relationships with other friendly services and assure the American public that the intelligence community is performing the best possible job. Oversight is the key. He mentioned Senate Resolution 400 establishing the permanent Committee and its oversight functions, asking Turner why he is now unwilling to fulfill these obligations. Turner advised that his current policy is not inconsistent with the Senate Resolution, that he had stated he would abide by S.Res. 400 to the best of his ability, and that there has been good cooperation between the Committees and the community to date. Stevenson reminded Turner that by objecting to advance notification, he was refusing to comply with both the Senate Resolution and the Carter Executive Order.

Senator John Chaffee (R-R.I.) recommended that the need for a waiver of the bill's provisions in a time of war should separate assassinations from military actions. He was concerned about the risk involved when reporting to two committees, which in reality represent 32 people plus staff, all rotating every four years.

Problems with Prior Notification

Senator Walter D. Huddleston (D-Ky.) expressed real fear that the bluntly stated disagreements in Turner's statement jeopardized the entire legislation. He said that until now only two areas of difference had surfaced, the questions of prior notice and full access. Turner said that the Administration will not relent on either of those two issues. He said the Committees would be kept "fully and currently informed," but not about sources and methods and "in a timely fashion" but not necessarily in advance. Dan Silver, CIA General Counsel, responded that the Administration prefers the language in the Attorney General's version of the disclosure of identities bill and that the Senate version does not make significant improvements.

Senator Lugar (R-Ind.) was concerned with the issues of checks and balances, committee oversight and prior notifications. Turner emphasized that the present system of oversight by Congress is unique in the world and this procedure should continue as is.

Senator Jackson (D-Wash.) emphasized the shared responsibility under a constitutional structure. The real issue should be limiting reporting to the absolute minimum number of people. In 25 years, there had

never been a leak from the Atomic Energy Committee, made up of only nine members from each house of Congress. He had joined with Senator Mansfield to set up one joint intelligence committee and we are no further today than we were 30 years ago!

Senator Durenberger (R-Minn.) asked about the number of do's and don'ts in the bill. Turner said the don'ts are limited to protect the American people, but the bill gets too specific with unduly strict language about when and how much to notify Congress. What is missing, he went on, is protection of sources and methods when reporting to Congress. Asked whether covert action could be carried on in a manner consistent with the values of Americans, he replied that ". . . to conduct foreign policy, efforts are made overtly, quietly and also covertly . . . there is a legitimate place for all."

At the close, Senator Huddleston reviewed the Administration's objections to the bill as drafted. He said there were only four don'ts, and of these, the Administration only differed with respect to the use of the media, clergy and other individuals. He concluded that invasion of privacy should be permitted only after a Presidential decision and Court Order proving reason to believe a person has information damaging to the U.S. Therefore, he thought the bill balances authority and intrusion.

February 28, 1980

The Senate Select Committee reconvened hearings on S.2284 with a panel consisting of FBI Director Webster, CIA Deputy Director Carlucci, NSA Director Inman, DIA Director Tighe, and Deputy Under Secretary of Defense for Policy Murphy.

Judge Webster responded first to questions in the areas of counterintelligence, the comprehensive charter approach vs. separate pieces of legislation, and dealing with leaks. Webster listed seven suggestions for relief from the Freedom of Information Act requests which are now overwhelming the Dept. of Justice. He asked for a seven-year moratorium on all criminal investigation files and complete exemption for organized crime files. Senators Chaffee and Goldwater were alarmed that the Justice Department devotes 300 staffers and $9 million a year to these requests. Some concern was expressed by the panel on the prohibition in the draft charter from use of the media, clergy and academics. Carlucci insisted that the Administration is not asking for an "unrestricted license" but rather for a waiver in extraordinary circumstances. Asked by Senator Leahy whether the CIA would advise the Committee of this use, Carlucci emphatically stated there would be notification, but not prior notification.

Senator Moynihan asked Carlucci to comment on the evolution of attitudes within the Administration, manifested by the shift demonstrated in Admiral Turner's testimony on Feb. 21. Moynihan expressed the Committee's surprise upon learning that the Senate Committee and the Administration are now farther apart than ever before. Carlucci advised there has been a very constructive dialogue between the Committee and the Administration, but the disagreement centers on the desire of the Committee to alter the present reporting situation. Carlucci and Bayh then discussed points in drafting section 142 of the bill and the conflict between protection of sources and methods, and keeping the Committees fully and currently informed. Other issues discussed by the panel included the quality of technical intelligence, counterintelligence, and signals intelligence. Hearings are scheduled to continue through March.

Court Decision—Snepp v. United States

Background

On February 19, 1980, the Supreme Court upheld the judgment of the District Court against Frank W. Snepp, III, a former CIA agent who published a book on the U.S. withdrawal from Viet Nam entitled *Decent Interval.* The District Court had found that Snepp had breached both his position of trust with the CIA and the Secrecy Agreement that he signed on joining the Agency in 1968. It enjoined future breaches of Snepp's agreement and imposed a constructive trust on Snepp's profits from the book.

The Court of Appeals for the Fourth Circuit accepted the findings of the District Court that Snepp's failure to submit his manuscript for prepublication review, as required by the Secrecy Agreement, had inflicted "irreparable harm" on intelligence activities vital to our national security. The Court upheld the injunction against future violations, but found that the record did not support imposition of a constructive trust on the book's profits. Instead the Court limited recovery to nominal damages and to the possibility of punitive damages if the government in a jury trial could prove tortious conduct.

Snepp petitioned the Supreme Court seeking review of the judgment, contending that punitive damages are an inappropriate remedy for the breach of his promise to submit writings to the Agency for prepublication review. In a cross petition, the government sought to bring the entire case before the Court in the event the Court should decide to grant Snepp's petition. The government also stated that "because the contract remedy provided by the Court of Appeals appears to be sufficient in this case to protect the Agency's interest, the government has not independently sought review in this Court." The Supreme Court granted the Petitions for Certiorari "in order to correct the judgment from which both parties seek relief."

The Decision

The Supreme Court, in an unsigned opinion, found that Snepp's employment with the CIA involved an extremely high degree of trust, and that in the agreement he signed, Snepp explicitly recognized that he was entering a trust relationship. (The first sentence of the 1968 Agreement stated ". . . I am undertaking a position of trust in that Agency of the government . . .") The Court also recognized that in publishing his book about CIA activities, Snepp violated his obligation to submit all material for prepublication review, even though the government did not contend that the book contained classified material.

The Court found that a former agent, using his own judgment, may nevertheless reveal information that the CIA could have identified as harmful with its broader understanding of what may expose classified information and confidential sources. The Court cited testimony of Admiral Turner, CIA Director, that Snepp's book and others like it have seriously impaired the effectiveness of American intelligence operations. The Court agreed with both the District Court and the Court of Appeals that Snepp's breach of his explicit obligation for prepublication clearance of material (classified or not) has irreparably harmed the United States.

In discussing the question of the appropriate remedy, the Court found that the actual damages attributable to such publication are unquantifiable. Nominal damages are a hollow alternative, with no deterrent effect. Punitive damages are speculative and unusual. The Court concluded that a constructive trust protects both the government and the former agent, the latter by limiting the damages and requiring him only ". . . to disgorge the benefits of his faithlessness."

In footnote 6, the Court suggests that, even in the absence of an agreement, a constructive trust or other remedy might be appropriate for other government leaks. The Court said, "Quite apart from the plain language of the agreement, the nature of Snepp's duties and his conceded access to confidential sources and materials could establish a trust relationship." (This controversial footnote has been a red flag to the press which has suggested that the decision itself was a reaction to the evident leaks in the Woodward and Armstrong book about the Supreme Court, *The Brethren.*)

The Dissent

In his dissent, Mr. Justice Stevens, joined by Justices Brennan and Marshall, found the Court's relief "unprecedented and drastic." The major problems are that the remedy is not authorized by any applicable law and the Court disposed of the issue summarily on cross petition without argument and brief. Justice Stevens would have limited the remedy for the breach of a fiduciary obligation arising out of employment to a constructive trust upon the benefits derived from his misuse of the traditional type of confidential information (i.e. trade secrets or other internal information). Recognizing that Snepp breached a contractual duty to submit the publication for review, Stevens finds that the majority "attempts to equate this contractual duty with Snepp's duty not to disclose, labelling them both as 'fiduciary.'"

Stevens then goes on to analyze the most common form of employee agreement covenants, covenants not to compete. In the past the Court has ruled that such covenants must be subject to the rule of reason: they must protect a legitimate interest of the employer; their enforcement must be in the public interest; and they must be limited in geographic or other scope. He concludes that an equity court might find that the prepublication clearance covenant should not be enforced.

Even assuming the covenant should be enforced, he finds the constructive trust imposed by the Court is not the appropriate remedy. Snepp had not gained profits as a result of his breach of the contract, since both parties agree that the book contains no classified material and thus would have been cleared for publication. In previous cases whenever the CIA has reviewed material, it has sought only to prevent the disclosure of classified information, thus admitting that former employees have a first amendment right to publish unclassified material. Thus, Snepp has not caused the government the type of harm which would ordinarily be remedied by the imposition of a constructive trust.

Finally, Stevens notes the government's claims that the CIA has been damaged by Snepp's flouting his prepublication review obligation and thus making the CIA appear powerless to prevent such publication. Stevens does not find this contention persuasive. If in fact there were harm to the government, Stevens would find punitive damages clearly the preferable remedy since "a constructive trust depends on the concept of unjust enrichment rather than deterrence and punishment." In commenting on the Supreme Court's procedures in disposing of the case on petition only, Stevens states that, given the wording of the government petition, it would be highly inappropriate and beyond the Court's jurisdiction to grant the government's petition while denying Snepp's, yet he finds that that in essence has been done.

Stevens concludes that the Court's decision disregards two venerable principles. First, the Court has concluded equitable relief is necessary in the absence of a showing of the inadequacy of punitive damages which had been ordered by the Court of Appeals. Second, the Court has fashioned a drastic new remedy to "enforce a species of prior restraint on a citizen's right to criticize his government." He supports this view with a footnote

(footnote 17) that the authority to search for classified information in a critical book before it is published is bound to have an inhibiting effect on the author, and that the right to delay publication for this review is a form of prior restraint. He concludes that the Court has not met the burden which must be borne by the censor to justify such prior restraint on free speech.

Comment

This decision establishes the CIA's secrecy agreement as a basis for review, not only to excise classified information, but also to look for other types of information which may bear on the Director's duty to protect intelligence sources and methods. The Court's suggestion that such a duty may be found in other employment relationships, absent a specific agreement, will surely be controversial and may even be tested by other agencies. The burden of proof sufficient to justify a substantial remedy is unlikely to be met, however, in those cases where national security or other significant government interests are not as clearly demonstrated as they were found by the District Court and the Court of Appeals to be in the Snepp case. Since the constructive trust remedy had no basis in the language of the agreement itself, future employee agreements to protect secrecy might specify in advance the nature of the remedy.

The extension of the injunction against publication to "those acting in concert with Snepp" poses an additional problem in that it could, in the words of the Random House counsel, place a publisher under prior restraint for the first time. The press has seized on "prior restraint" in the dissent. The public's perception of the decision will no doubt be characterized by views such as those of Herblock's cartoon on the case (published in *The Washington Post* and *Newsweek*). Entitled, "I Like This Robe-and-Dagger Stuff," it showed Chief Justice Burger, along with Rehnquist and White, with a dagger pinning up a warning which read, "A former government employee who publishes anything better get government approval first or else! and never mind the 1st amendment. The Unsigned Six." Other commentators, such as Anthony Lewis in *The New York Times*, have focused on the unusual procedural aspect of the case which arose largely because the findings of the District Court and Court of Appeals were not in doubt and because the specific requests of the petitions for review were limited to the question of remedy.

Hearings on Intelligence in the Foreign Policy Process

February 20, 1980

Rep. Zablocki (D-Wisc.), Chairman of the House Foreign Affairs Subcommittee on International Security and Scientific Affairs stated that the purpose of the hearing was to examine two major aspects of the congressional role: as intelligence consumer and as overseer. In a written statement Rep. McClory (R-Ill.)

Senate Select Committee on Intelligence

Birch Bayh, Ind., Chairman

Majority
Adlai E. Stevenson, Ill.
Walter D. Huddleston, Ky.
Joseph R. Biden, Jr., Del.
Daniel P. Moynihan, N.Y.
Daniel K. Inouye, Hawaii
Henry H. Jackson, Wash.
Patrick J. Leahy, Vt.
Robert Byrd, W.Va., ex officio

Minority

Barry Goldwater, Ariz., Vice Chairman
Jake Garn, Utah
Charles McC. Mathias, Jr., Md.
John Chafee, R.I.
Richard Lugar, Ind.
Malcolm Wallop, Wyo.
David Durenberger, Minn.
Howard Baker, Jr., Tenn., ex officio

William G. Miller, Staff Director

House Permanent Select Committee on Intelligence

Edward P. Boland, Mass., Chairman

Majority

Clement J. Zablocki, Wis.
Bill D. Burlison, Mo.
Morgan F. Murphy, Ill.
Les Aspin, Wis.
Charles Rose, N.C.
Romano L. Mazzoli, Ky.
Norman Y. Mineta, Calif.
Wyche Fowler, Jr., Ga.

Minority

J. kenneth Robinson, Va.
John M. Ashbrook, Ohio
Robert McClory, Ill.
G. William Whitehurst, Va.
C.W. Bill Young, Fla.

Thomas K. Latimer, Staff Director

urged that action on the Hughes-Ryan reporting problem should not be delayed because of the pending charter legislation, which he feels has "slim chances" in this election year.

Congressional Panel

Senator Birch Bayh, Chairman, Senate Select Committee on Intelligence; Rep. Edward P. Boland, Chairman, House Permanent Select Committee on Intelligence; Senator Barry M. Goldwater, Vice Chairman, Senate Select Committee on Intelligence; and Rep. J. Kenneth Robinson, Ranking Minority Member, House Permanent Select Committee on Intelligence, testified before the Committee.

Mr. Boland cited the two intelligence committees as proof of a congressional process in which the executive branch can have confidence. Bayh emphasized the good working relationship with the CIA, FBI, and NSA, but advised that it be legislated rather than continue under executive order. Goldwater recommended one joint Senate and House committee, adding that the Foreign Relations and Armed Services Committees also needed to share intelligence information. Boland commented that this suggestion would never get by "considering the present climate" in Congress.

Following Goldwater's confirmation of the quality of intelligence being supplied, Bayh added that the problem lay in the analysis of the overwhelming amounts of information being made available to policymakers. Boland commented that the concerns are timeliness of reporting, as well as the number of people privy to the information. Goldwater strongly urged that journalists who publish sensitive national security information be tried for treason. In an angry speech, he declared that "... this is abuse of freedom of the press ... it is tearing down the security of our nation ... and it goes on day after day." Dan Quayle (R-Ind.), a former newspaper reporter, challenged Goldwater, suggesting it is the "blabbermouth bureaucrats" rather than the press who are responsible.

CIA Director

Admiral Turner outlined the relationship between the CIA and Congress as threefold: (1) Congress as a consumer of intelligence; (2) Congress as an overseer of intelligence; and (3) Congress as a provider for and protector of the intelligence community. He reported that in the past three years, the number of oral and written briefings to Congress had doubled and quadrupled respectively. He warned, however, that limits must be recognized since the CIA is a confidential advisor to the President, is structured to serve the executive, and must stay clear of policy formulation. Admitting that CIA overview by Congress is a legitimate concern, he warned, however, that a balance must be reached between oversight and risk to national security.

Admiral Turner suggested that the CIA has been misrepresented in the press in that there is no intent to reduce the availability of information to Congress. Reacting to Goldwater's insistence that 99% of leaks come from the executive branch, Turner responded that leaks come from everywhere and that at present there is no effective legislation to punish those responsible. He pinpointed the various bills before Congress to improve this situation, i.e., the names of agents and graymail bills, and applauded the Supreme Court Snepps decision.

Asking whether the intelligence community did not really influence foreign policy decisions by providing information to Congress, Chairman Zablocki added that he was particularly concerned that members do not receive adequate information for formulating these decisions in crucial areas. Turner advised that the Agency can only estimate what it believes will result from certain actions and that it is up to Congress to determine these actions. Human intelligence had been more productive in 1979 than ever before in history, but Turner objected to the focus on technical intelligence during budget hearings. Turner said that in the last two years, 820 positions had been eliminated in contrast to the 1350 recommended cuts in personnel. Reflecting that the Agency has never had a sound personnel management policy, he stated that a void now exists at the middle level that must be eliminated to beef up covert action activities virtually neglected for the past decade.

Turner advised that it is unnecessary to tell 200 people on the Hill what only 50 people in the Agency are told. Asked by Rep. Wolff (D-N.Y.) about the causes of leaks, Turner said leaks can be reduced by purging the system of the number of classified documents and by use of the new security control system currently being introduced throughout government agencies. He also cited President Carter's 1979 Executive Order downgrading classification as another positive factor.

John M. Maury

Former Assistant Secretary of Defense for Legislative Affairs and former CIA Legislative Counsel, John M. Maury agreed that access to sensitive information is often required by an overwhelming number of people and that legislation is necessary to protect sources and methods. He stated that the Agency as well as the country has been badly hurt by leaks and that we will be paying the price for many years. Since human intelligence sources cannot be equalled by technical intelligence sources, he emphasized that our intelligence gathering capabilities have been impaired by neglect of human sources.